IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case(Appeal) Nos.112 to 114 and 205 of 2004

Commissioner of Income Tax
Chennai III .. Appellant in TC.Nos.112 to 114/04

Deputy Commissioner of Income Tax
Special Range II
121, Nungambakkam High Road,
Chennai 600 034. .. Respondent in T.C.No.205 of 2004

-vs-

State Industries Promotion Corporation of
Tamil Nadu Limited
Chennai 600 008. ..Respondent in T.C.Nos.112 to 114 of 2004/Appellant in T.C.No.205 of 2004

TAX CASE APPEAL Nos.112 to 114 of 2004 filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 28.03.2003 in ITA Nos.573 to 575/Mds/95 for the assessment years 1989-90, 1991-92 and 1990-91 respectively.

TAX CASE APPEAL No.205 of 2004 filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai in ITA Nos.1855/Mds/95 dated 31.07.2003 for the assessment year 1992-93.

(ITA.No./64,63 and 65/94-95 dated 24.1.1995 and ITL No. 1=/9596 dated 14.7.1995 respectively on the file of the Commissioner of ;Income Tax (Appeals) VII Chennai against
GI.No. 16-5/89-90 dated 3.3.1994
GI.No. 16-5/91-92 dated 10.3.1994,
GI.No. 16-5/90-91 dated 20.2.1995 and
GI.No. 16-5/93-93 dated 20.2.1995
respectively on the file of the Deputy Commissioner of Income Tax Special Ramge-II, Chennai)

For Appellant in TC.No.112 to 114 and for Respondent in TC.No. 205/04 : Mrs. Pusya Sitaraman
Senior Counsel for IT.

For Respondent in TC.No 112 to 114/04 : Mr.Ramachandran, Senior Counsel for Ms.Anitha Sunanth and For Appellant in TC.No. 205/04

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C O M M O N J U D G M E N T

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J)

Tax Case Appeal Nos.112 to 114 of 2004 are filed by raising the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee Company was entitled to exemption under Section 10(20A) of the Income Tax Act 1961 even though the assessee Company has not been formed under specific law for the purpose of development as per the requirements of Section 10(20A)?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee Company was eligible under Section 10(20A) of the Income Tax Act, 1961 even though the assessee has not substantially complied with the requirements of Section 10(20A)?

3. Whether the Income Tax Appellate Tribunal was right in directing granting of relief for the assessment yea4rs 1989-90 and 1990-91 when the scope of proceedings under Section 147 is limited to assessment of income that has escaped assessment and in directing deduction in income to NIL for the assessment year 1991-92 when the assessee itself has been returned a positive income?

2. Tax Case Appeal No.205 of 2004 is filed by raising the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the appellant would not be entitled to the benefit of exemption under Section 10 (20A) of the Income Tax Act 1961?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Judgment of the Supreme Court in the case of "Gujarat Industrial Development Corporatio;n and others reported in 227 ITR 383 would not apply to appellant's case?

3. Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is right in not following the earlier orders of the Tribunal dated 06.01.2003 and 28.03.2002 granting the benefit under Section 10(20A) of the Income Tax Act and is justified in differing from the view taken by another Bench?

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4. Whether on the facts and circumstances of the case, insofar as there is a decision of another Bench of the Appellate Tribunal in the appellant's own case for earlier years, the Appellate Tribunal is justified in taking a different view without referring the matter to a Special Bench?

3. The facts as culled out of the statement of facts are under:-

The appellant in T.C.No.205 of 2004 is a State Government undertaking engaged in the promotion of industrial activities and making provision for infrastructure to industries. It has as its various objects, promotion of industrial growth, development of industrial infrastructure for which it acquires land, develops it and provides facilities like power water, etc. For the assessment year (T.C.No.205 of 2004) 1992-93, assessee filed return on 28.12.1992 admitting 'nil' income. The assessment was completed by order dated 20.02.1995 denying exemption to the assessee. On an appeal before the First Appellate Authority, the CIT Appeals, by order dated 14.07.1995 partly allowed the assessee's appeal. On further appeal before the Income Tax Appellate Tribunal, the Tribunal held that exemption would not available to the assessee. Thus the appeal by the assessee before this Court.

4. In respect of earlier assessment years, 1989-90, 1990-91 and 1991-92, the Tribunal granted the claim of exemption in favour of the assessee, which was put in issue by the Revenue in T.C.Nos.112 to 114 of 2004.

5. The learned Senior Counsel appearing for the assessee in the first instance has contended that though for the earlier years as referred to above, the department itself has granted the benefit to the assessee under Section 10(20A) of the Income Tax Act, it has deviated from the earlier decision for the assessment year 1992-93 for no reason. However, the learned counsel for the department sought to sustain the order of the Tribunal by contending that the assessee would not claim rather cannot come within the ambit of Section 10(20A) of the Income Tax Act to claim the exemption. Thus she contends that the order of the Tribunal in T.C.No.205 of 2004 is correct and that of the decision in T.C.Nos.112 to 114 of 2004 is not correct.

6. We have heard the learned counsel on either side and perused the material available on record.

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7. Section 10(20A) of the Income Tax Act, 1961 reads as follows:-

"any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both".

8. It is an admitted case that the assessee is not an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both. It is also an admitted case that the assessee has been incorporated under the provisions of the Companies Act, 1956. Hence,

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the assessee cannot claim the benefit under Section 10(20A) of the Income Tax Act, 1961, though it might come with the later part of the provisions of Section 10(20A) of the Income Tax Act, 1961.

9. For arriving the opinion, we can take the support of similar view taken by the Allahabad High Court in the case of Sharda Sahayak Samadesh Kshettra Vikas Nigam Ltd., vs Commissioner of Income Tax reported in 244 ITR 364, in which, while answering the question as to whether the Tribunal was justified in holding that the assessee Company was not an authority as envisaged Section 10(20A) of the Income Tax Act, 1961 has held that the the assessee Company was not entitled to exemption under Clause 20A of Section 10 of the Income Tax Act , in as much as it was registered as a Government Public Company as defined in Section 617 of the Companies Act, 1956 and not an authority constituted by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages.

10. Mr.Ramachandran, learned Senior Counsel appearing for the assessee submits that in COMMISSIONER OF INCOME TAX VS. U.P.FOREST CORPORATION reported in (1998) 230 ITR 945, the Supreme Court while rejecting the finding of the High Court that the U.P.Forest Corporation is a local authority, however remitted back the matter to the authorities concerned to consider whether the U.P.Forest Corporation is entitled to take advantage of the provisions of Section 11 of the Income-tax Act. The same treatment may be given to the assessee herein by relegating them to go before the authorities to advance their case that they are entitled to the advantage of the provisions of Section 11 of the Act.

11. Here again, we are not able to accept the suggestion made by the learned Senior Counsel for the reason that in that case during the course of assessment proceedings for 1977-78, 1980-81 and 1984-85, the Forest Corporation claimed its status to be that of a local authority entitled to exemption under Section 10(20). The assessing officer rejected the claim and in respect of assessment years 1977-78 and 1980-81, he taxed it in the status of artificial juridical person and in respect of the assessment year 1984-85 as a company. The assessee then filed an appeal in respect of the assessment year 1977-78 and 1980-81 and the Commissioner of Income-tax (Appeals) came to the conclusion that the respondent was a local authority and as such its income was exempted from tax. That order was challenged in appeal by revenue before the Tribunal, which set aside the order of the Commissioner of Income-tax (Appeals). Instead of following the procedure prescribed by the Act by way of reference under Section 256 of the Income-tax Act, the assessee filed three writ petitions in the Allahabad High Court challenging the orders of High Court in respect of the assessment years 1977-78 and 1980-81 and the order of the assessing authority for the assessment year 1984-85. The writ petitions were allowed by coming to the conclusion that the Forest Corporation was a local authority and therefore its income was exempt from tax. Before the High Court, it was contended that the assessee was a charitable institution and therefore its income was in any case entitled to be exempted under Section 11(1) of the Act. That contention was found favoured by the High Court. On appeal by revenue to the Supreme Court, the Supreme Court has held that the High Court was not correct in coming to the conclusion that the respondent was a local authority and entitled to exemption under Section 10(20) of the Act, however relegated the assessees before the authorities to seek the

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claim under Section 11 of the Act. The facts of the present case are not comparable to that of the decision of the Supreme Court so as to grant the relief by way of relegation to the authorities. In that case, the Supreme Court has also given a cautionary note that the High Court would not have entertained the writ petitions and granted the relief. Hence, we are not able to accept the contention and the contention is rejected.

12. The reliance made in Gujarat Industrial Development Corporation vs. Commissioner of Income Tax reported in 227 ITR 414 by the assessee does not also advance the case of the assessee in view of the fact that the assessee in the cited case was an authority created under the provisions of Gujarat Industry Development Act, 1962 which satisfied the requirement of Section 10(20A) of the Act. But the assessee in this case was incorporated under the Companies Act.

13. In the light of the above discussions, the question of law Nos.1 and 2 in T.C.Nos.112 to 114 of 2004 and question of law Nos.1 to 4 in T.C.No.205 of 2004 are answered against the assessee. The question of law No.3 in T.C.Nos.112 to 114 of 2004 does not arise for consideration in the facts and circumstances of the case and hence the same is not answered. Thus T.C.Nos.112 to 114 of 2004 are allowed and T.C.No.205 of 2004 is dismissed.
rg

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1.The Registrar, Income tax, Appellate Tribunal, Rajaji Bhavan-III Floor, Besabt Nagarm, Chennai.

2.Commissioner of Income Tax
Chennai III.

3.The Deputy Commissioner of Income Tax
Special Range II
121, Nungambakkam High Road,
Chennai 600 034.

4. The Commissioner of Income tax, (Appeals) VII Chennai.

+ Two CCs to Mrs. Pusya Sitaraman, Sr. Standing Counsel for It SR 46341,46343
+ 4 CC tko Ms. Anitha Sumanth Advocate sR 45715,45714
JRG (co)
sg /8/07

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